

PRINCIPLES OVER THE PRINCIPLES: THE ENDURING
RELEVANCE OF *THE FEDERAL PROSECUTOR*

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In September 2024, then–Attorney General Merrick Garland addressed the eighty-fifth annual U.S. Attorneys’ Conference.¹ Perhaps unsurprisingly, Garland invoked the first such address — the 1940 speech of then–Attorney General Robert H. Jackson, *The Federal Prosecutor*.² Garland used Jackson’s famous speech as a jumping-off point to discuss his own contributions to the United States Department of Justice, beginning with his work on the first version of the *Principles of Federal Prosecution*, first published in 1980.³ As explained by Garland, that work “set out, for the first time in a single authoritative source, a set of principles to guide the exercise of prosecutorial discretion,”⁴ a subject also at the heart of *The Federal Prosecutor*.⁵ Garland also told the assembled Justice Department employees that “the current version of the *Principles* is now a 23,000-word electronic document enshrined in the Justice Manual.”⁶ He seemed to be suggesting that was an improvement on Jackson’s work.

I believe that it is not. The concise 1,969 words of Jackson’s *The Federal Prosecutor* offer a far better approach to improving the inevitable exercise of discretion by federal prosecutors.⁷ The *Principles* embody an institutional, procedural approach to guiding — and, ultimately, constraining — prosecutorial discretion: They demand that prosecutors take particular steps and consider particular factors before making particular decisions, often requiring the lawyers actually prosecuting cases to seek approval from one or more higher-ranking officials, particularly political appointees such as U.S. Attorneys and Assistant

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¹ Merrick B. Garland, Att’y Gen., Address to the Workforce: An Independent Justice Department (Sep. 12, 2024) in U.S. DOJ: ARCHIVES (Feb. 5, 2025), <https://www.justice.gov/archives/opa/speech/attorney-general-merrick-b-garland-delivers-address-workforce-independent-justice> [https://perma.cc/FKL6-X729].

² *Id.* (citing Robert H. Jackson, *The Federal Prosecutor*, 31 J. AM. INST. CRIM. L. & CRIMINOLOGY 3 (1940)).

³ *Id.* (citing U.S. DOJ, PRINCIPLES OF FEDERAL PROSECUTION (1980)).

⁴ *Id.*

⁵ See Jackson, *supra* note 2, at 3–5.

⁶ Garland, *supra* note 1 (citing U.S. DOJ, Just. Manual § 9-27.000 (2018) [hereinafter *Principles*]).

⁷ See Jackson, *supra* note 2, at 3–6.

Attorneys General.⁸ And the *Principles* are just one piece of the vast regulatory framework that seeks to restrain and direct today's federal prosecutors.⁹ *The Federal Prosecutor*, by contrast, focuses on individual prosecutors making decisions, urging them to act morally, ethically, and in a way that will earn the approval of their peers and their community.¹⁰ For all the obvious limitations of that latter approach, it provides a more realistic — and therefore better — prognosis for maximizing just outcomes across thousands of prosecutors making individual decisions about tens of thousands of cases every year.¹¹

This is in part because regardless whether it is a problem that the federal justice system vests individual prosecutors with broad discretion in particular cases, it is certainly a reality.¹² This was Jackson's central theme. *The Federal Prosecutor* opens by proclaiming that “[t]he prosecutor has more control over life, liberty, and reputation than any other person in America,” and supports that claim with a daunting list of calamities that a prosecutor may choose to inflict seemingly at will, including “from malice or other base motives,” “if he is that kind of person.”¹³ Neither Garland nor the *Principles* deny that in the end, individual prosecutors will make most of the decisions that matter. In his recent address, Garland stressed the *Principles*' admission that “[i]mportant though these principles are to the proper operation of our federal

⁸ See, e.g., *Principles*, *supra* note 6, § 9-27.310 (establishing factors to be considered before charging crimes with a mandatory term of imprisonment, and requiring various approvals for doing so); *id.* § 9-27.400 (establishing factors to be considered when dropping charges as part of a plea agreement, requiring documentation for the reasons for doing so, and requiring Assistant Attorney General approvals for certain reasons); *id.* § 9-27.760 (establishing factors to be considered when identifying people who have not been indicted in public filings or proceedings, and requiring U.S. Attorney or Assistant Attorney General approval for doing so).

⁹ The *Principles* are just one of eighty-four sections in the *Justice Manual*'s chapter on criminal prosecutions, which is itself just one of nine titles in the massive *Justice Manual*. See U.S. DOJ, *Justice Manual* (2018). And the *Justice Manual* is by no means the exclusive source of written authority to which federal prosecutors are supposed to refer. See, e.g., *Principles*, *supra* note 6, § 9-27.120 (directing prosecutors to refer to several other memoranda).

¹⁰ See, e.g., Jackson, *supra* note 2, at 6 (“A sensitiveness to fair play and sportsmanship is perhaps the best protection against the abuse of power, and the citizen's safety lies in the prosecutor who tempers zeal with human kindness . . .”).

¹¹ There are over 6,000 Assistant U.S. Attorneys charging cases as of 2022. See Jory Heckman, *Federal Attorneys Group Urges DOJ to Fix Pay Disparity, Set New Policy for Telework*, FED. NEWS NETWORK (Jan. 26, 2022, at 17:50 ET), <https://federalnewsnetwork.com/pay/2022/01/federal-attorneys-group-urges-doj-to-fix-pay-disparity-set-new-policy-for-telework> [https://perma.cc/LA9R-HK65]. In 2024, 69,802 criminal cases were filed in federal courts. *U.S. District Courts — Judicial Business 2024*, U.S. CTS., <https://www.uscourts.gov/data-news/reports/statistical-reports/judicial-business-united-states-courts/judicial-business-2024/us-district-courts-judicial-business-2024> [https://perma.cc/4GD9-Q223].

¹² See *United States v. LaBonte*, 520 U.S. 751, 762 (1997) (Prosecutorial “discretion is an integral feature of the criminal justice system, and is appropriate, so long as it is not based upon improper factors.”); Peter L. Markowitz, *Prosecutorial Discretion Power at Its Zenith: The Power to Protect Liberty*, 97 B.U.L. REV. 489, 490 (2017) (“[P]rosecutors routinely make determinations about which cases to bring, how vigorously to pursue them, and if and when to abandon a prosecution.”).

¹³ Jackson, *supra* note 2, at 3.

prosecutorial system, the success of that system must rely ultimately on the character, integrity, sensitivity, and competence of” the prosecutors themselves.¹⁴ Whoever you think committed the worst errors of the Justice Department’s last decade, it is unlikely that a better “23,000-word electronic document”¹⁵ would have dissuaded them. So if the individual prosecutor is in fact where the battle will be fought, shouldn’t the focus remain there — and not on a set of steps, factors, and approvals that in the end still depend on the individual?

But it is not just that the institutionalist approach of the *Principles* creates a distraction. It also provides an excuse. The *Principles*’ institutionalist approach encourages prosecutors to believe that if they follow the specified procedures and secure the right signatures, they have acted properly. That allows individual prosecutors to avoid taking responsibility for outcomes in which they play a crucial part. *The Federal Prosecutor* does better to place accountability directly on individual prosecutors, even if it mostly does so by demanding that they make decisions based on such amorphous factors as “decency,” “local sentiment,” and those “qualities . . . as elusive and as impossible to define as those which mark a gentleman,” which “those who need to be told would not understand . . . anyway.”¹⁶

I attempt to prove this point by contrasting some of those “impossible to define” qualities with the *Principles* and their practice in the last ten years of the Justice Department — a period that happens to coincide with my tenure there.

I. PROMOTION AND REPUTATION

The contrast between *The Federal Prosecutor* and the *Principles* is so great that at times they simply disagree. The *Principles* expressly bar a prosecutor deciding whether to bring charges from considering the “possible effect of the decision on the attorney’s own professional or personal circumstances.”¹⁷ This is not a minor or technical restriction: It appears in a list of just three prohibitions, another of which is the bar on considering race,¹⁸ in a section that Garland described as the “core” of the *Principles*.¹⁹ Jackson, on the other hand, was quite comfortable with prosecutors who kept an eye on their own careers, defending their desire to “leave behind . . . a good record,” whether to “seek[] promotion” or “return[] to private practice.”²⁰

¹⁴ Garland, *supra* note 1 (quoting U.S. DOJ, *supra* note 3, at ii).

¹⁵ *Id.*

¹⁶ Jackson, *supra* note 2, at 6.

¹⁷ *Principles*, *supra* note 6, § 9-27.260.

¹⁸ *Id.*

¹⁹ Garland, *supra* note 1.

²⁰ Jackson, *supra* note 2, at 4.

That is not to say that Jackson endorsed careerist prosecutors. He made the above remarks in urging his audience not “to build up statistics of success” at the expense of “fair dealing”²¹ — which is likely the same concern behind the *Principles*’ prohibition.²² But rather than proceeding by bureaucratic fiat, *The Federal Prosecutor* tries to convince its audience to voluntarily abstain from such behavior. Jackson appeals both to prosecutors’ moral sense and to their self-interest, characterizing prosecutors who seek statistics at the expense of justice as possessing “a perverted sense of practical values, as well as defects of character.”²³ It is in that vein that Jackson discusses “Reputation” and “promotion.”²⁴ According to him, a prosecutor mindful of his career prospects can have “no better asset than to have his profession recognize that his attitude toward those who feel his power has been dispassionate, reasonable and just,” which is why “practical values” commend building a reputation for fairness rather than statistical achievement.²⁵

The Federal Prosecutor’s career advice should not be taken lightly; its author was the Attorney General, and would shortly become a Supreme Court Justice, all without graduating law school.²⁶ But regardless of his skills as a guidance counselor, Jackson’s effort at persuasion bests the *Principles*’ pronouncement. One does not become a federal prosecutor by accident; to become even an Assistant U.S. Attorney requires efforts sure to weed out those who have no interest in their careers.²⁷ That is to say nothing of the ambition required to become one of the presidentially appointed U.S. Attorneys of the rank that heard Jackson’s speech firsthand.²⁸ I have worked for three of the latter, and although they differed greatly in many ways, each gave considerable thought to how significant charging decisions would affect their reputations. In recognizing those realities, Jackson’s appeal to decency and rational self-interest continues the genius of America’s Founding generation, who understood that government officials will inevitably have

²¹ *Id.*

²² The *Principles* do not supply the reasoning for their prohibition, but the fear of scalp-seeking prosecutors is sufficiently ubiquitous that it likely needs no explanation, *see, e.g.*, Mary De Ming Fan, *Disciplining Criminal Justice: The Peril amid the Promise of Numbers*, 26 *YALE L. & POL’Y REV.* 1, 56 (2007), just as the *Principles* did not need to explain why prosecutors may not consider race in their charging considerations. It is, however, possible that the *Principles* also wished to forbid equally a prosecutor from forgoing prosecutions that might endanger their careers for reasons such as a prospective defendant’s political power.

²³ Jackson, *supra* note 2, at 4.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Solicitor General: Robert H. Jackson*, OFF. OF THE SOLIC. GEN., U.S. DOJ (Sep. 18, 2023), <https://www.justice.gov/osg/bio/robert-h-jackson> [https://perma.cc/LXE4-4BA8].

²⁷ *See The Path to a U.S. Attorney’s Office*, HARV. L. SCH., <https://hls.harvard.edu/bernard-koteen-office-of-public-interest-advising/opia-job-search-toolkit/career-and-application-guides/the-path-to-a-u-s-attorneys-office> [https://perma.cc/BEV2-SQ4U] (describing the many hurdles to gaining the job).

²⁸ Jackson, *supra* note 2, at 3 n.1.

ambition, and so a successful government must channel that quality rather than ignore it.²⁹

By contrast, the *Principles*' command that prosecutors put themselves out of mind when making charging decisions is counterproductive. And not only because telling people not to think about a pink elephant often causes them to do exactly that.³⁰ The lack of sufficient resources to prosecute most of the federal crimes that occur is a persistent dynamic of federal prosecution and the main reason that federal prosecutors inevitably must exercise discretion in choosing which cases to prosecute.³¹ So to put the *Principles*' phrases in context, "determining whether to commence . . . prosecution"³² is what prosecutors do. But the "possible effect of the decision on the attorney's own professional or personal circumstances"³³ is how the public, through its elected and appointed officials, can ensure the prosecutor is a faithful agent — they can promote, demote, or fire her even if they cannot possibly superintend each decision she makes. The *Principles*' insistence that prosecutors ignore the latter when doing the former amounts to directing prosecutors to render themselves impervious to an important check on their discretion.³⁴ Because prosecutors will — and should — think about their reputation and career when doing their jobs, Jackson's pragmatic effort to align personal reputation and public goods offers more than the *Principles*' vision of the prosecutor as selfless warrior-monk.

II. PRESTIGE, SENTIMENT, AND OPINION

The Federal Prosecutor evinces comfort not only with a prosecutor's concern for reputation and promotion. It embraces prosecutors mindful of all manner of outside views. Jackson thought it a virtue that federal attorneys would, within their districts, consider not only "the views of the court" and "the feelings of the group from which jurors are drawn," but also "local sentiment and opinion" more broadly.³⁵ And to help these prosecutors make the best use of this knowledge, Jackson cautioned

²⁹ See, e.g., THE FEDERALIST NO. 51, at 319 (James Madison) (Clinton Rossiter ed., 1961).

³⁰ See *United States v. Burden*, 964 F.3d 339, 345 n.2 (5th Cir. 2020).

³¹ See Jackson, *supra* note 2, at 5; *United States v. Texas*, 143 S. Ct. 1964, 1972 (2023) (noting the executive branch's need to use discretion because it "does not possess the resources necessary" to pursue everyone who violated just two specific statutes). That is not to say that the public would be better served by the police state that would result from an extravagantly resourced DOJ that unthinkingly prosecuted every violation of federal law. Cf. Jackson, *supra* note 2, at 5 ("We know that no local police force can strictly enforce the traffic laws, or it would arrest half the driving population on any given morning.")

³² *Principles*, *supra* note 6, § 9-27.260.

³³ *Id.*

³⁴ A true believer in the proceduralist approach of the *Principles* might argue that federal prosecutors should be restrained not by concerns of reputation and advancement, but by the dense regulatory hedgerows "enshrined in the Justice Manual." Garland, *supra* note 1. Below, I attempt to explain why that approach will not (and has not) worked.

³⁵ Jackson, *supra* note 2, at 4.

against measures that would decrease their “prestige . . . in their districts.”³⁶

On this score, the *Principles* differ from *The Federal Prosecutor* more in emphasis than absolutely. The Justice Department’s electronic document makes some allowance for consideration of public sentiment, encouraging prosecutors to consider the “public attitude” about particular types of crime when examining the “nature and seriousness of the offense,” one of nine factors prosecutors “should weigh” when determining whether to bring charges.³⁷ But that allowance is relatively fleeting. The *Principles* refer to the public far more often when discussing the need to protect the public³⁸ or to act in “the public interest”³⁹ — neither of which appear to be matters on which the public’s sentiment need be directly consulted. To the contrary, the *Principles* themselves will assure the public that these matters are being fairly handled on their behalf, “promoting confidence on the part of the public . . . that important prosecutorial decisions will be made rationally and objectively.”⁴⁰

It is at best unclear how the *Principles* could accomplish this goal. The vast majority of federal prosecutions will not receive comprehensive media coverage. In my decade as a prosecutor, I helped convict over thirty murderers and handled an array of financial crimes, some involving billions of dollars in fraud. But to the extent the public heard about them at all, it was in brief press releases conveying the bare essentials — such as the crime and resulting charges⁴¹ — or news reports

³⁶ *Id.* Jackson acknowledged that nonetheless some “uniformity of policy . . . is necessary to the prestige of federal law.” *Id.*

³⁷ *Principles*, *supra* note 6, § 9-27.230.

³⁸ *See, e.g., id.* § 9-27.110 (referencing the “protection of the public” as one of the basic responsibilities of federal attorneys).

³⁹ *See, e.g., id.* § 9-27.001 (describing federal attorneys as “represent[ing] the public interest in the federal criminal justice process”).

⁴⁰ *Id.* § 9-27.001. Whether experts following appropriate procedures can be trusted to make decisions that are both good for and acceptable to the public obviously implicates a much larger debate about the administrative state. But embracing Jackson’s more personal, less institutional approach to prosecutorial discretion does not require general hostility to the “headless Fourth Branch.” *Freytag v. Comm’r*, 501 U.S. 868, 921 (1991) (Scalia, J., concurring in part and concurring in the judgment). Jackson was a committed New Dealer who defended the expansion of the administrative state for President Franklin D. Roosevelt. *See* Charles Patrick Thomas, Note, *A New Deal Approach to Statutory Interpretation: Selected Cases Authored by Justice Robert Jackson*, 44 J. LEGIS. 132, 133–34 (2017). And federal prosecutors are unquestionably part of the executive branch, subject to removal at will by the President. *See Morrison v. Olson*, 487 U.S. 654, 690 (1988).

⁴¹ *See, e.g., Armed Robber Pleads Guilty to Murder*, U.S. ATT’Y’S OFF., S. DIST. OF N.Y. (Feb. 16, 2018), <https://www.justice.gov/usao-sdny/pr/armed-robbler-pleads-guilty-murder> [<https://perma.cc/Y7CZ-H6UV>].

focused on their most scandalous,⁴² humorous,⁴³ or otherwise eye-catching details.⁴⁴ That is to say, the public learns about the *facts* of the crime, rather than the *process* by which it came to be charged. For that reason, prosecutors hoping to maintain or increase faith in the justice system would likely do better to ask directly how “local sentiment and opinion” will view the facts of their cases, as Jackson urged,⁴⁵ rather than imagining that the *Principles*’ silent presence in an electronic database will assure the public that their decisions are rational and objective.

That conclusion holds no less true in the few cases covered with sufficient thoroughness to consider the process behind the indictment. Although there has been extensive coverage of the process behind the previous administration’s decision to pursue federal charges against President Trump, and the current administration’s decision to charge various prominent public figures such as former FBI Director James Comey, little of it concerned compliance with the *Principles*.⁴⁶ With good reason. All these prosecutions result from policy decisions made by senior officials. In the case of the current administration, a directive from the top to pursue certain individuals.⁴⁷ In the case of the last, the decision to appoint a special prosecutor with the rather focused mission of investigating the conduct of one man and his immediate associates.⁴⁸ Whether these decisions reflected a fair consideration of the investigated person’s conduct, or unfair consideration of their politics, did not depend

⁴² See, e.g., Michael Rothfeld, Adam Goldman & William K. Rashbaum, *Fast Living and Foreign Dealings: An FBI Spy Hunter’s Rise and Fall*, N.Y. TIMES (Aug. 14, 2023), <https://www.nytimes.com/2023/08/14/nyregion/fbi-mcgonigal-oligarch-nyc.html> [<https://perma.cc/GV39-MHKM>].

⁴³ See, e.g., Emily Saul, “Veal Shank Redemption Mobster” Did Lose the Weight — Just Not as Planned, N.Y. POST (Oct. 18, 2019, at 17:45 ET), <https://nypost.com/2019/10/18/veal-shank-redemption-mobster-did-lose-the-weight-just-not-as-planned> [<https://perma.cc/E678-N4NW>] (describing an overweight mobster’s plan to escape prison through a rigorous program of diet and exercise that he believed would allow him to squeeze through a narrow cell window).

⁴⁴ DIRTY MONEY: *Payday* (Netflix, aired Jan. 26, 2018) (recounting the opulent lifestyle and questionable morals of a fraud and racketeering defendant).

⁴⁵ Jackson, *supra* note 2, at 4.

⁴⁶ See, e.g., Katherine Faulders et al., *Timeline: Special Counsel’s Investigation into Trump’s Handling of Classified Documents*, ABC NEWS (Jan. 22, 2026, at 21:45 ET), <https://abcnews.go.com/US/timeline-specialcounsels-investigation-trumps-handling-classifieddocuments/story?id=101768329> [<https://perma.cc/QM6Z-SA9U>]; Hannah Rabinowitz et al., *Former FBI Director James Comey Indicted*, CNN (Sep. 25, 2025, at 23:25 ET), <https://www.cnn.com/2025/09/25/politics/james-comey-justice-department-trump-bondi-perjury-virginia> [<https://perma.cc/W97S-BUTH>]; Samuel Chamberlain & Victor Nava, *Former FBI Director James Comey Indicted on Charges of Lying to Congress, Obstruction of Justice*, N.Y. POST (Sep. 25, 2025, at 20:54 ET), <https://nypost.com/2025/09/25/us-news/former-fbi-director-james-comey-indicted-on-charges-of-lying-to-congress> [<https://perma.cc/47Q4-RQMC>].

⁴⁷ Donald J. Trump (@realDonaldTrump), TRUTH SOCIAL (Sep. 20, 2025, at 18:44 ET), <https://truthsocial.com/@realDonaldTrump/posts/115239044548033727> [<https://perma.cc/6584-C5HX>].

⁴⁸ See *Appointment of a Special Counsel*, OFF. OF PUB. AFFS., U.S. DOJ: ARCHIVES (Feb. 6, 2025), <https://www.justice.gov/archives/opa/pr/appointment-special-counsel-o> [<https://perma.cc/2SH5-J7AA>].

on adherence to a 23,000-word electronic document, even if it is posted to a publicly available website, because the point of controversy was the decision itself, not whether it was being carried out according to established procedures.⁴⁹

It should thus be unsurprising that over the last several years, public opinion of the Justice Department has swung significantly between administrations: Democrats had a far more favorable view of the Department when a Democrat was the chief executive, and Republicans the opposite.⁵⁰ The political debate about which side has the better view, or even the particular reasons for this seesaw, lies beyond the scope of the subject here. For present purposes, it suffices to say that the *Principles* do not seem to have created confidence in the Department's impartiality, no matter how earnestly they try to "inform the public of the careful process by which prosecutorial decisions are made."⁵¹

That is not to say the *Principles* fail to address the matter. They forbid considering prospective defendants' "political association, activities, or beliefs" with equal force as their race or religion.⁵² But none of that has prevented adherents of both parties from believing exactly that is being done when their opponents hold power. That is perhaps largely because policy manuals created by the Executive cannot constrain the Executive⁵³ — whether it proceeds by openly defying the manual, or by punctiliously complying with the procedures within it along the way to a politically directed outcome. But perhaps it is also in part because the *Principles* do little to convince prosecutors that excluding ideology from prosecutorial decisionmaking is a particularly grave matter, given that they hide the command to do so in 23,000 words of guidance on all manner of subjects — some quite inane⁵⁴ — and place it alongside the

⁴⁹ This is not meant to call into question whether any set of transparent, neutral procedures can assure the public of a prosecution's fairness. The Constitution provides a robust set of such procedures that protect defendants once prosecutors have decided to charge them, and also serve to expose the prosecution's evidence and theories to public scrutiny. See, e.g., U.S. CONST. art. III, § 2 (requiring jury trials); *id.* amend. VI (requiring speedy and public jury trials). But those procedures are enforced by judges who are appointed for life, and thus insulated from the Executive. See *id.* art. III, § 1. My point is limited to efforts to constrain federal prosecutors from within the Executive — before they ever get to court — as both the *Principles* and *The Federal Prosecutor* attempt.

⁵⁰ See Jocelyn Kiley & Andy Cerda, *Republicans' Views of Justice Department, FBI Rebound as Democrats' Views Shift More Negative*, PEW RSCH. CTR. (Aug. 27, 2025), <https://www.pewresearch.org/politics/2025/08/27/republicans-views-of-justice-department-fbi-rebound-as-democrats-views-shift-more-negative> [https://perma.cc/W5B5-9KUJ].

⁵¹ *Principles*, *supra* note 6, § 9-27.001.

⁵² *Id.* § 9-27.260.

⁵³ To be clear, the *Principles* are not the product of rulemaking under the Administrative Procedure Act, by which the Executive may impose legal constraints on itself. Rather, the *Principles* expressly provide that they do not "create any rights or benefits" in litigation. *Id.* § 9-27.150.

⁵⁴ For example, the *Principles* explain that where a prosecutor determines that there is probable cause to believe that someone has committed a federal crime, "he/she should consider whether to: 1. Request or conduct further investigation; 2. Commence or recommend prosecution; 3. Decline

quixotic demand that prosecutors never consider how their most important decisions will affect their reputation.⁵⁵

Jackson could tell the difference. *The Federal Prosecutor* is perhaps best known, or at least most cited, for its caution that “the most dangerous power of the prosecutor” is that he will single out “some person whom he dislikes or desires to embarrass,” then turn the power of the federal prosecutorial apparatus against them.⁵⁶ Those warnings served as an introduction to the dangers of allowing “the real crime” to become “being unpopular with the predominant or governing group,” given that “[t]hose who are in office are apt to regard as ‘subversive’ the activities of any of those who would bring about a change of administration.”⁵⁷ By condemning what truly is destructive in politicized prosecutions, while allowing for — and even harnessing — the other motives one might expect in a prosecutor, *The Federal Prosecutor* separates the sheep from the goats while the *Principles* hold their nose at every kind of animal.

In fact, by focusing on the individual prosecutor’s “spirit of fair play and decency”⁵⁸ — and whether her peers and community will believe her to have such “elusive” qualities⁵⁹ — *The Federal Prosecutor* provides inspiration where the *Principles* provide an excuse. Prosecutors who wish to advance themselves by pleasing “the predominant or governing group” will always be able to find shelter in a theory of process, whether it is the rational and objective decisionmaking supposedly assured by the *Principles*’ procedures, or a constitutional imperative to tear down such obstacles to the will of the sole democratically elected official within the unitary executive.⁶⁰ Jackson does not allow prosecutors to bury their heads in such distractions when deciding whether to charge a particular man or woman with serious crimes. Instead, he focuses them on whether they, and the people they work with and for, would say that their decisions are those of someone “who really wanted the right thing done.”⁶¹

prosecution and refer the matter for prosecutorial consideration in another jurisdiction; 4. Decline prosecution and commence or recommend pretrial diversion or other non-criminal disposition; or 5. Decline prosecution without taking other action.” *Principles*, *supra* note 6, § 9-27.200. Presenting prosecutors with a decision tree amounting to little more than, “investigate, or prosecute, or ask someone else to prosecute, or don’t prosecute but do something less, or do nothing,” hardly inspires confidence that the *Principles* are a source of vital wisdom.

⁵⁵ See *supra* notes 30–34 and accompanying text.

⁵⁶ Jackson, *supra* note 2, at 5.

⁵⁷ *Id.*

⁵⁸ *Id.* at 4.

⁵⁹ *Id.* at 6.

⁶⁰ See, e.g., Exec. Order No. 14,215, 90 Fed. Reg. 10447, 10447 (Feb. 24, 2025) (discussing “Presidential supervision and control of the entire executive branch”).

⁶¹ Jackson, *supra* note 2, at 3.

My own experience as part of a well-covered federal prosecution, *United States v. Adams*,⁶² illustrates the enduring relevance of *The Federal Prosecutor*. In *Adams*, senior Justice Department officials debated the merits of the case — including the soundness of the process that led to its initiation and conclusion — in dueling letters that quickly became public.⁶³ In her letter, then–U.S. Attorney for the Southern District of New York Danielle Sassoon explained her refusal to dismiss the charges as part of a quid pro quo meant to extract political concessions from Eric Adams, who was then Mayor of New York City.⁶⁴ Sassoon briefly mentioned the *Principles* in an opening list of the many sources that guided her decisionmaking, but said nothing about its contents.⁶⁵ By contrast, she quoted *The Federal Prosecutor* twice in explaining why she would not “seek a dismissal driven by improper considerations.”⁶⁶ In his response, then–Acting Deputy Attorney General Emil Bove made no reference to the *Principles*, but quoted *The Federal Prosecutor* at even greater length, arguing that Jackson’s speech instead supported his order to dismiss the case.⁶⁷ In *Adams*, knowing which side of the debate was correct was not particularly challenging,⁶⁸ but it was still the relevant debate. By urging prosecutors to base their decisions on broadly held notions of what is right, just, and fair — even if those are not precise factors — *The Federal Prosecutor* is more likely to help its audience make choices that are morally simple, but personally difficult, than anything “enshrined” in a government manual.⁶⁹

⁶² 777 F. Supp. 3d 185 (S.D.N.Y. 2025).

⁶³ See Letter from Emil Bove, Acting Deputy Att’y Gen., to Danielle Sassoon, Acting U.S. Att’y, S. Dist. of N.Y. (Feb. 10, 2025), <https://static01.nyt.com/newsgraphics/documenttools/76308bc134b67d36/4cc46c59-full.pdf> [<https://perma.cc/7ZTU-YM5G>]; Letter from Danielle Sassoon, Acting U.S. Att’y, S. Dist. of N.Y., to Pamela Bondi, Att’y Gen. (Feb. 12, 2025) [hereinafter Sassoon Resignation], <https://static01.nyt.com/newsgraphics/documenttools/24535586a908999e/3801d435-full.pdf> [<https://perma.cc/6RP8-GTT8>]; Letter from Emil Bove, Acting Deputy Att’y Gen., to Danielle Sassoon, Acting U.S. Att’y, S. Dist. of N.Y. (Feb. 13, 2025) [hereinafter Bove Response], <https://static01.nyt.com/newsgraphics/documenttools/7c71fo4757006735/05b1f604-full.pdf> [<https://perma.cc/9QWG-HMKA>].

⁶⁴ Sassoon Resignation, *supra* note 63, at 1, 3.

⁶⁵ *Id.* at 1.

⁶⁶ *Id.* at 7.

⁶⁷ See Bove Response, *supra* note 63, at 5.

⁶⁸ See *United States v. Adams*, 777 F. Supp. 3d 185, 192 (S.D.N.Y. 2025) (“Everything here smacks of a bargain: dismissal of the Indictment in exchange for immigration policy concessions.”); see also *id.* at 233–35 (discussing the negative implications of the Justice Department granting leniency to an elected official in order to secure his political cooperation).

⁶⁹ Garland, *supra* note 1.